United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

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77-7162

5/10/77

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MILLICENT LINDEN,

Plaintiff-Appellant,

- v -

DAVID FOX and SAMUEL GRAFF,

Defendants-Appellees.

C/A Docket No. 77-7162

D/C Index No. 76 Civ. 4403

Judge K. Duffy

Reply Brief

RESPONSE IN OPPOSITION

UNITED STATES COURT OF APPEALS
FILED
MAY 10 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

BRL

STATE OF NEW YORK: COUNTY OF NEW YORK - S.S.:

Plaintiff, Millicent Linden, duly swears to the full truth of the following statements in full accord with all records:

Defendants' reply brief does not reply to plaintiff's brief on appeal; nowhere is there any response to the contents and facts submitted by plaintiff before this Court. In effect, therefore, defendants plead plaintiff's cause and complaint.

In addition, defense attorney's first statement under the title "Facts" on the first page, states that "Plaintiff's complaint ALLEGES that defendants are attorneys.."

Defendants either are attorneys or they are not; defendants represented the opposition in plaintiff suit against a dhicorpractic doctor, begun in Supreme Court of the State of New York and transferred to the Civil Court of the City of New York.

If defendants are not truly attorneys, as the use of the word "alleges" by defense attorney herein, then they are misrepresenting themselves and usurping another person's means for court representation. If defendants are truly attorneys and members of the Bar, then they

are legally practicing lawyers and there is no doubt and nothing to "allege". Could it not be safely assumed that they are members of the Bar, for if they were not, could it not also be safely assumed that the Bar Association would not permit such mispresentation, and would they not have been found out in the course of their appearing in Courtrooms so often? Plaintiff is inclined to respond to the questions in the affimrative, and believes that this Court is also bound to believe that defendants are, in effect, practicing lawyers.

Defense attorney then procedds to outline briefly the background of plaintiff's suit against the aforementioned doctor whom defendants in the instant issues defended.

Page 5, 2nd paragraph, defense attorney notes plaintiff's complaint about defendants' "falsified records and perjured themselves" thus obstruc ting justice". Then goes on to say that, "This, of course, is a matter which can be handled by State Courts."

Nowhere does defense respond to the facts submitted by plaintiff fully supported by records annexed in the exhibits of plaintiff's efforts to have the "STATE COURTS" handle the "matter". Defense is fully aware that the State Courts supported defendants' indisputably falsified statements and records, that the State Courts did not and would not "handle the matter".

How can defense have it both ways: to state the facts of the suit having been already in State Courts, where the documents were obviously presented by plaintiff fully stating those violations of the most basic, elementary, fundamental alws of the land, to be heard in redress on the merits, not on the subjective use of court power by the sitting court filled to the brim with prejudice against pro se appearance, and then expect that the State Courts "handle a

matter" that was already "handled" by those "avenues". Is it not school child exposure to each of us that the tyranny that prompted the DECLARATION OF INDEPENDENCE was the springboard and spark for that Declaration, that the aim was to have the right to life and liberaty, that tyranny had to be contained and that it could onlybe contained by internal safe-guards in the system to provide for that life and liberty from such tyranny, and that the Federal Government is that guardian of those safe-guards, that the laws of the land must suprecede the State laws, that is, those elementary laws of the land that directly deal with gross violations of the mandates in our CONSTITITION.

The facts, therefore, are that the State Courts did not and would not "handle the matter", and defense attorney does not state the case when he writes plaintiff's complaint against defendants "can be handled by the State Courts".

Now would the Grievance Committe of the New York Association for the Bar agree to "handle the matter", which is why plaintiff could make "no mention whatever of defendants being involved" as defense writes on page 5, 3rd paragraph.

It is a well-known fact of common practice that there is professional, mutual support and protection of colleagues, whether it is the profession of medicine, or law, or physics, or engineering, etc. against those who are not members of the individual profession, and in the instance of pro se appearance, the fact is heightened considerably. It is no wonder than, that plaintiff could not and did not receive any acceptance of the facts by the Bar's Grievance Committee, and, therefore, could make no further mention of involvement other than the effort made to that Association.

The same common practice of mutual protection extended to the

effort at redress in the Criminal Court, and so plaintiff's eearch for redress and grievance against the most gross violations of either State or Federal laws was once again met with closed door resistance. With such outright refusals by the Bar and Criminal Court, how could plaintiff make "mention" of "defendants' being involved"?

With State Court and City Courts and Criminal Courts and the New York Bar Association refusing to hear plaintiff's irreftuable, indisputable gross violations of any and all laws common to all systems of law in the land, plaintiff last court of resort is the Federal Court, the known guardian of the laws of the land which are also the undipputed laws of each State and each City in the land.

It is, therefore, incumbent upon defense attorney to acknowledge that there is a FEDERAL CAUSE OF ACTION, despite his contention on page 5 to the contrary, ffrst paragraph.

Were it not so, the underlying principles that"involve a Federal Cause of Action," would be denying defendants' own rights of defense. Were it not so, neither would defendants have the right to that opportunity and privilege to be heard in court, even as they denied plaintiff that right through illegal, perjured actions and statements. It's no wonder that defense attorney would relgate the issues to the State Courts who have already denied plaintiff that right and ppivilege, yet demand it for themselves for their own one-sided, self-interests. But they harm themselves as well as the one they victimize with such practices, for they are denying their own rights under thelaw in principle if not in action, illegal actions.

Plaintiff recognizes that defense attorneys' role is to protect their clients, but plaintiff asks just how far can that obligation be taken: Can it be taken to the extent of inflicting aggravating

physical harm through the act of forcing undue, unwarranted court appearances when defendants, all of them, doctor and lawyers, are fully aware of the serious, severe nature of the injury, duly reported and documented in the records from medical and hospitral reports. Defendant-lawyers saw the torment and hardship plaintiff went through in court while the muscle spasms which take no notice of court timing procedures to hold off their involuntary seizures demand attention and alleviation, yet plaintiff was obliged to follow court demands and proceudures or lose even that access to the courts. And these actions by defendant-lawyers were done in a manner entirely casual and without the least degree of concern for the physical suffering of another human being.

How different are these facts and factors from the corporal punishments meted out by the historical tyrants who would only act upon their one-sided self-interest regardless of the justifications and injustices and undue and unwarranted victimization of another human being? From plaintiff's standpoint and perspective, who had to have first-hand experience of it, and for a prolonged period on an emergency basis, when life hung on the proverbial thread, there is next to no difference in terms of defendant-lawyers' actions, only a thin cloak of disguise in the clothes of modern civiliztion and practiced demeanors that are bent to their own limited designs.

Defense attorney nowhere replies to the fact that the sitting Supreme Court judge wrote that the order defendant-lawyers submitted the morning of plaintiff's scheduled day of trial was never ruled on in the first place, and in the second place, that the county clerk records clearly, unmistakebly show a verified Bill of Particulars, yet defendant-lwayers allege an unverified b/o/p as reason to strike plaintiff's case off the calendar, and theCivil Court judge complies.

Nowhere does defense attorney reply to the any of the long list of violations and deprivation of plaintiff's rights sbumitted in plaintiff's brief and exhibits.

Yet, defense attorney indugles to an extraordinary, unwarranted extent on "diversity of citizenship".

Of course, defense atttorney cannot find any plaintiff's allegation in the complaint of "diveristy of citizenship". There is none and plaintiff made none. For the obvious reason that nowhere is it an issue, that the issues are well-dcoumented and far more serious and out-reaching than any diversity of citizenship. As in the aforementioned statements, the issues are fundamental, and come directly under Constitutional mandates, the right to be heard and the right to redress grievause physical harm in the court systems established for those purposes.

Defense attorney did not concentrate on "diveristy of citizneship" until it was mentioned in Judge Duffy's order, as the mention of Federal Cause of Action.

But plaintiff shows beyond any shadow of any doubt that there is indeed a Federal Cause of Action under the circumstances filed in all of the court records.

Perhpas it is distressing to have to see with such obvious, factual information and documentation the cruel treatment of the wonderful privileges mandated in our Constitution by any professional in the legal system, either the Courts or collegues, but surely tyranny cannot be allowed to run rampant, otherwise we deny our own Constititon and the hard-earned, hard-fought sacrifices to gain it and have it in effect for each individual regardless of stature or status. IF ONE GIVE UP THE RIGHT TO PURUSE JUSTICE, ONE GIVES UP RIGHT TO THE DIGNITY INERHENT IN LIFE ITSELF, as the Constitution recognizes in mandating the pursuit of life and liberty.

Incredibly, defense attorney writes on page 4:that plaintiff "..does not attempt to say in what manner defendant violated those Articles of the Constition".

The first page of plaintiff's brief discusses the fact that the records show a verified Bill of Particulars, that an alleged order is submitted which is not ruled on, etc., etc. And annexed to the brief are 45 exhibits containing the true copies of the original records, from the Supreme Court and Civil Court, clearly containing defendant-lawyers affixed signatures to those documents in their alleged claims of unverified bill of particular and court order that was never ruled on from their own motion in the Supreme Court alleging an unverified bøo/p and which was accepted by the trial court judge without hearing plaintiff on the facts of the record, and which was subsequently the reason for strikign plaintiff's case from the calendar from an alleged b/o/p that claimed to be unverified by defense attorney while the all the records definitely showed that plaintiffs b/o/p was duly verified, initially and repeatedly, only to be denied in each ensuing effort by plaintiff in each motion of compliance and denying by the sitting and court and the referring court, as demanded by defense attorney.

However much defense attorney is obliged to defend the clients, there is no law that allows, or permits, or states that in the executive of that obligation, is it permissible to do so by falsifications of the documented, proven facts. In that, the Constition is emeinently clear, unabiguous, and directly direct: there is no law that gives legal or moral license to defraud, suppress, abuse privileges and resort to illegalities; to do so is to deny the purpose, the existence of our Constitution; defendants are all subject to the direct mandates of those edicts in the Constitiions

If ever there was FEDERAL CAUSE OF ACTION, surely the instant action must rank among the most qualified for it: defendants submit an alleged court order to strike plaintiff's case from the calendar which the sitting judge says he did not rule on, and all motions and efforts by plaintiff to resolve the obvious conflict were denied to plaintiff in all the courts and in other related organizations; defendants state an outright false statement of an alleged unverified billof particulars which the county clerk records show to be verified, etc., etc. among other cruel deed of illegalities that infringed upon the inflicted injury to aggravate physical hardship - yet defense attorney alleges that plaintiff "does not attempt to say in WHAT MANNER defendants violated those articles (of the Constitution)".

Whatever did defense attorney conceive of the exhibit that document those violations cited above? Were they there for ornament? Surely, having the facts of plaintiff's rock-bottom struggle for mere existence, not only in hanging on to the thread of life, but the thread, precipitously thin thread of economic hardship as well as physical hardship when plaintiff's vitality was lost to the injury which was the sole captial of free-lancing and compelled to live on $30. per week when others vociferously and actively take to the streets to decry $200. per week. Each paper submitted to the court and copies to defendants, in its relative sense, is an econimic hardship, and the exhibits plaintiff has sent regularly to defendants are a source of hardship - copies are hard to come by, and costly when there is no access to use of a copy machine, and yet defendants complained of the volume of the files!

Yet defense writes that "It is difficult to tell just what plaintiff is claiming against the defendants" on page 4

If that were so, perhaps defendants can explain why plaintiff

could not get defendants to answer plaintiff's INTERROGATORIES, why they moved to prevent responses to them, when they presented INTERROG_ ATORIES TO plaintiff and recieved replies to each and every question, immediately after entering Default Motion before ruling by the court.

Thequestions were pertinent, simple and direct. Surely, one is entitled to know and reasonable to ezpect to know how an order that affects the serious result of having one's case taken off the calendar was obtained which the sitting court did not rule on and which was not in any cout records on the monring of the scheduled day of trial. And to account for the fact that the county clerk, the calendar clerk, the Executive Chief Clerk of the court with the Chief clerk of the calendar office all found the bill of particulars verified or the papers would not beprocessed for the trial term. Surely, plaintiff is entitled to know or to have some response to those and other valid questions for which provisions are made in court procedures to have them presented and expect some answer.

If defendants had a valid reason, it should and could be known, if not, then they are entirely aware of their own violations and will not respond for the wrong they have done against plaintiff and are justifiable reluctant to hald acoountable. They use the law to argue for their own rights, but abuse the law to deny plaintiff's rights.

Was the law established for those in the realm of the law only? Or are not independent individuals, unaffilated, unmonied, without access to influences, not equally entitled to equal dispensation of the law as well as lawyers? If the law in the sights of lawyers were meant only for practicing lawyers, then such a concept would defeat the noble lives of those who fought so valiantly for our Constititon.

There is simple, noble, unarguable stand, as noble as the thoughts

inherent within the written words of our Constitution, that no power shoucl be unaccountable, that a line must be drawn where each person must be responsible for his or her act, to be held accountable for it.

There must be a point for a DECLARATION OF CONSCIENCE as well as a DECRARATION OF INDEPENDENCE from tyranny and abuse of power when the violations are astronomical in number, persistent, cruel to the point of inflicting physical harassment caused by those violations when physical injury is known and documented professionally and defendants have been relentless in defying their own knowledge of the law, using it to subvert it and denying plaintiff's rights through those violations continuously. Defendants thought nothing of scheduling Examination Before Trial twice, asking for adjournment and then not appearing when plaintiff had to make tortuous trips to court only to find defendant had not intenetion of taking EBT at any time, of referring to the Civil Court judge whom they knew told them to dimsiss by making a motion when that court's immediate neighbor was sitting in themotion court, when that same judge who leaned over his desk in chambers and told plaintiff to GO TAKE UP SOME RELIGION, LAWYERS GOT TOLIVE, and then proceeded to mandate the demands made by defendants in each of the dozen orders issued by them.

Now just what did defendants expect from such actions? Did they conceive that plaintiff would have no reaction to them, that plaintiff did not contain life forces that inherently contain the dignity of life itself that rebelled against being trod upon, as plaintiff had protected life forces at every turn regardless of what thatlife was made up of in plaintiff's work in applying the laws of harmony from nature that make life work in the known facts? However much plaintiff may have looked upon and described as idealisti the true facts reveal that those who refer to the aggressions and

resort to violations of any fundamental laws, of nature's or man's, and describe themselves as "realists", "facing facts of life", are far removed from the true facts of life and law. The real facts in nature's and man's fundamental laws, constant and common to all, ensure life and law; without them, life and law would soon become extinct, and extinction includes even those who violate those laws.

The doctrine of MENS REA, things of the mind, reflects this understanding of human character and attitude. Where there is criminal intent, was it expected, was it in the mind, carries extra burden upon the one committing the act. Defendants could only have known with complete awareness of their own intent to deny plaintiff the right to be heard in their acts of violating the law and court proeedures, but persisted in continuing MENS REA from 1975 to 1977.

There can be no doubt of their intentions nor of ther acts. They are self-evident and not arguable. There are no matters of discretion or ambiguity. Facts are facts, documented in the records, of defendants vioations against the fundmantal laws of the land, and they have accumulated them to a mountain of condemnation.

Plaintiff appeals to the inherent sense of decency and fair play cantamountly clear in our Constitution, as well as the clear-cut right to be heard in redress in a trial by jury.

WHEREFORE, plaintiff respectfully requests this Court to grant that right to plaintiff to heard in a trial before a jury on the evidance contained and documented in the records as note in the foregoing.

Dated: May 9, 1977, New York,N.Y.

Respectfully submitted,

Millicent Linden

Millicent Linden
500 East 74th Street
New York, N.Y. 10021

To: EVANS,ORR,PACELLI,NORTON & LAFFAN
15 Park Row, New York, N.Y. 10038

SWORN TO BEFORE ME THIS 9th day of May 1977

Angel Fuster

ANGEL FUSTER
NOTARY PUBLIC, State of New York
No. 31-4504110
Qualified in New York County
Commission Expires March 30, 1979

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATE OF NEW YORK)
: S.S. :
COUNTY OF NEW YORK)

MILLICENT LINDEN, being duly sworn, deposes and says that deponent is over 18 years of age and resides at 500 East 74th Street, New York, New York 10021.

On May 9, 1977, 1977, deponent served the within RESPONSE IN OPPSOSITION upon:

EVANS, ORR, PACELLI, NORTON & LAFFAN
Attorney for Defendant
P.O. Address
15 Park Row
New York, New York 10038

by depositing true copies of same enclosed in postpaid properly addressed wrappers, in a post offic official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Millicent Linden

SWORN TO BEFORE ME THIS
9th day of May, 1977

Angel D. Fuster
Notary Public

ANGEL FUSTER
NOTARY PUBLIC, State of New York
No. 31-4504110
Qualified in New York County
Commission Expires March 30, 19[illegible]

C/A 77 - 7162

76 Civ. 4403
Judge Duffy

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MILLICENT LINDEN,

Plaintiff-Appellant,

- v -

DAVID FOX and SAMUEL GRAFF,

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RESPONSE IN OPPOSITION

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BU.8-9453